

STATE OF SOUTH DAKOTA )  
COUNTY OF MINNEHAHA ) : SS

IN CIRCUIT COURT  
SECOND JUDICIAL CIRCUIT

DEBORAH GEIKEN,  
Plaintiff,

**VS.**

THARALDSON EMPLOYEE  
MANAGEMENT CO., a North Dakota  
Corporation, and UMR, INC., a  
Delaware Corporation,  
  
Defendants.

CIV. 11-


SUMMONS

TO THE ABOVE-NAMED DEFENDANTS, THARALDSON EMPLOYEE  
MANAGEMENT CO., a North Dakota corporation, and UMR, INC., a Delaware  
corporation:

You are hereby summoned and required to serve upon Hoy Trial Lawyers, Prof. L.L.C., attorneys for the above-named Plaintiff, 1608 W. Russell Street, Sioux Falls, South Dakota, 57104, an Answer to the Complaint which is herewith served upon you within thirty (30) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated at Sioux Falls, South Dakota, this 4th day of August, 2011.

HOY TRIAL LAWYERS, PROF. L.L.C.

  
James L. Hoy  
1608 West Russell Street  
Sioux Falls, SD 57104-1330  
(605) 334-8900  
(605) 338-1918 (fax)  
[james@hoylaw.com](mailto:james@hoylaw.com)  
*Attorneys for Plaintiff*

Ex. A

STATE OF SOUTH DAKOTA )  
 : SS  
COUNTY OF MINNEHAHA )

IN CIRCUIT COURT  
SECOND JUDICIAL CIRCUIT

DEBORAH GEIKEN,  
Plaintiff,

vs.

THARALDSON EMPLOYEE  
MANAGEMENT CO., a North Dakota  
Corporation, and UMR, INC., a  
Delaware Corporation,  
Defendants.

CIV. 11-\_\_

COMPLAINT

Plaintiff Deborah Geiken, (hereinafter "Plaintiff), for her cause of action against Defendants Tharaldson Employee Management Co. and UMR, Inc. (hereinafter "Defendants"), states and alleges as follows:

1.

At all times material to this action, Plaintiff has resided in the City of Sioux Falls, County of Minnehaha, and State of South Dakota.

2.

On or about December 1, 2009, Plaintiff was terminated from her employment as an Assistant Manager of the Residence Inn by Marriott located at 4509 W. Empire Place in Sioux Falls, South Dakota, which was managed by Defendant Tharaldson Employee Management Co., a North Dakota corporation, which is registered to do business in South Dakota.

3.

Plaintiff's termination of employment was a qualifying event for the purposes of COBRA continuation coverage pursuant to 29 U.S.C. § 1163(2).

4.

At all times material herein, and through the end of calendar year 2009, Plaintiff was a beneficiary of and a participant in a group health benefit plan provided and sponsored by her former employer, known as the Tharaldson Employee Management Co. Health Benefit Plan.

5.

Defendant Tharaldson Employee Management Co. was and remains the named Plan Administrator for the employer-sponsored group health benefit plan and is responsible under ERISA for paying benefits under the plan; for the limited purposes of this action, Plaintiff alleges that Tharaldson Employee Management Co. and Tharaldson Employee Management Co. Health Benefit Plan are essentially one in the same.

6.

Defendant UMR, Inc. is a Delaware corporation and is registered to do business in South Dakota; since January 1, 2010, UMR, Inc. has served as an agent and third party administrator for the Tharaldson Employee Management Co. and its group health benefit plan; Plaintiff alleges that the acts and omissions of UMR, Inc. are the acts and omissions of Defendant Tharaldson Employee Management Co. under the laws of agency.

7.

On or about February 4, 2010, Defendants sent Plaintiff a written COBRA Election Notice.

8.

Within the election period, Plaintiff completed and returned the enrollment form electing to continue coverage under the Tharaldson Employee Management Co. group health benefit plan.

9.

On or about April 8, 2010, Defendants issued and mailed to Plaintiff a Confirmation of Cobra Election, a copy of which is attached hereto and incorporated by this reference as Exhibit "A."

10.

The Confirmation of Cobra Election (Exhibit "A") states that Plaintiff's "next payment due date is 4/1/2010" but also provided that Plaintiff had a "30 day grace period in which to pay [her] monthly premium" of \$123.70. The document also indicated that in order to be timely, the payment must be postmarked within the thirty-day grace period.

11.

The Confirmation of Cobra Election (Exhibit "A") invited persons with questions to contact the UMR COBRA ADMINISTRATION office by calling (800) 207-1824; Plaintiff called this number in order to clarify an ambiguity as to when the thirty-day grace period expired; the UMR representative with whom she spoke indicated that her next premium payment was due thirty days after the

issuance of the Confirmation of Cobra Election, or May 8, 2010; Plaintiff relied to her detriment upon this representation.

12.

On or about May 5, 2010, Plaintiff mailed check number 3366 in the amount of \$247.40 representing two monthly payments.

13.

On or about May 8, 2010, Plaintiff suffered a seizure caused by a blood clot in the head, resulting in a twenty-four day hospitalization at Avera-McKenna Hospital; as a result of this condition and the corresponding need for medical care and treatment, Plaintiff incurred over \$250,000.00 in medical and hospital expenses.

14.

On May 10 and May 12, 2010, Defendants sent termination notices indicating that Plaintiff's COBRA continuation coverage terminated on March 31, 2010, because of the alleged failure to make a required payment on time.

15.

On May 17, 2010, about the time that Plaintiff awoke from a coma and was transferred from the Intensive Care Unit to the Neuroscience Unit, Plaintiff's husband, Floyd Geiken, sent a written request to Defendants requesting reconsideration of Defendant's termination of COBRA continuation coverage.

16.

On April 4, 2011, Defendants issued a written response to Plaintiff's written request for review sent in 2010; a copy of this response is attached hereto

and incorporated by this reference as Exhibit "B"; in this response, Defendants acknowledge that they backdated the thirty-day grace period retroactive to April 1, 2010, even though the Confirmation of COBRA election was not sent until April 8, 2010.

17.

This is an action for civil enforcement of Plaintiff's rights as a participant and beneficiary of a group health benefit plan under the Employee Retirement Income Security Act (29 U.S.C. § 1001 et seq.) and the Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. § 1161, et seq.).

18.

This court has personal jurisdiction over the Defendants pursuant to SDCL §§ 15-7-2(1), 15-7-2(2), 15-7-2(3), 15-7-2(4), 15-7-2(5) 15-7-2(10), 15-7-2(11) and/or 15-7-2(14) and subject matter jurisdiction over this case and controversy pursuant to 29 U.S.C. §§ 1132(a)(1)(B) and 1132(e)(1).

19.

Defendants failed to provide Plaintiff with a full thirty-day grace period for the payment of COBRA continuation coverage as required by 29 U.S.C. § 1162(1)(C) and should be equitably estopped from relying upon the May 1, 2010, payment deadline based upon the contrary verbal representation to Plaintiff made by Defendants' agent and representative.

20.


In the alternative, Defendant's termination of Plaintiff's COBRA continuation coverage was arbitrary and capricious and a clear abuse of discretion under the circumstances.

WHEREFORE, Plaintiff prays for the following relief:

1. Judgment in favor of Plaintiff for benefits due under the Tharaldson Employee Management Co. group health benefit plan, specifically, all medical and health care expenses incurred by Plaintiff in April and May of 2010 which would have been covered under the plan had Plaintiff's coverage continued, along with prejudgment interest;
2. Attorney fees incurred by Plaintiff pursuant to 29 U.S.C. § 1132(g);
3. Plaintiff's costs and disbursements herein; and
4. Such other and further relief as the Court deems just and equitable under the circumstances.

Dated at Sioux Falls, South Dakota, this 4th day of August, 2011.

HOY TRIAL LAWYERS, PROF. L.L.C.



James L. Hoy  
1608 West Russell Street  
Sioux Falls, SD 57104-1330  
(605) 334-8900  
(605) 338-1918 (fax)  
[james@hoylaw.com](mailto:james@hoylaw.com)  
*Attorneys for Plaintiff*

April 08, 2010

MS DESORAH GEIKEN  
5705 W WALDEN DR  
SIOUX FALLS SD 57106

### CONFIRMATION OF COBRA ELECTION

This letter confirms your enrollment in the Benefits Continuation Plan under THARALDSON EMPLOYEE MANAGEMENT CO.

Your coverage and that of your qualified dependents, if any, started on 1/1/2010 and extends to 4/1/2010.

Payments are now paid to 4/1/2010. Your next payment due date is 4/1/2010.

Enclosed are coupons that should be sent along with each monthly payment. You will not be sent regular notices. Please review your first coupon as your first payment may be pro-rated. The first coupon also shows your next payment due date. It will be your responsibility to make payments on a timely basis. Payments must be received by UMR no later than the first day of the month for which payment is due. While premiums are due on the first of the month, you have a maximum 30 day grace period in which to pay your monthly premium. The 30 day grace period protects you from cancellation but claims incurred or prescription submissions may be denied during the grace period. If your payment is postmarked within the 30 day grace period, those denied claims and prescription submissions can be reconsidered for payment. Once your continuation of coverage terminates for late payment, non-payment, or check returned for non-sufficient funds, it cannot be reinstated.

Below is the plan(s) that you are enrolled in:

Plan Description	Coverage Level	Payment
UMR MEDICAL PLAN B PPO	SINGLE ONLY	\$123.70
Total Monthly Payment		\$123.70

If coverage under the Plan changes, such as benefits or rates, then continuation coverage changes accordingly.

Please make check or money order payable to UMR and mail to:

UMR  
COBRA ADMINISTRATION  
PO BOX 1206  
WAUSAU, WI 54402-1206

If you have any questions please feel free to contact the COBRA ADMINISTRATION during regular business hours at (800)207-1824 or email us at [mycobra@umr.com](mailto:mycobra@umr.com).

COBRA ADMINISTRATION

**EXHIBIT "A"**



**Qualified Beneficiary Notice to COBRA Administrator**

While on COBRA continuation coverage, you must notify the COBRA administrator in writing if any of the following events occur. Please refer to your summary plan description for additional information.

**Second or Multiple Qualifying Event:**

You must notify the COBRA Administrator in writing within 60 days after a second qualifying event occurs if you want to extend your continuation coverage.

The below-referenced Qualified Beneficiary incurred the following second or multiple qualifying event:

Event:

- |  |  |
|--|--|
| <input type="checkbox"/> Death of Employee               | <input type="checkbox"/> Legal Separation of Employee        |
| <input type="checkbox"/> Employee's Medicare Entitlement | <input type="checkbox"/> Cessation of Dependent Child Status |
| <input type="checkbox"/> Divorce of Employee             |  |

Event Date: \_\_\_\_\_

**Disability Extension:**

If you have been determined to be disabled by the Social Security Administration, you must notify the COBRA Administrator in writing within 60 days of the determination by the Social Security Administration and before the end of the original 18-month COBRA continuation period. If you were determined to be disabled prior to your COBRA qualifying event date and that determination has not been terminated, you must notify the COBRA Administrator in writing within 60 days of your COBRA qualifying event.

☐ I have been determined to be disabled by Social Security Administration

**REQUIRED: A copy of the Social Security determination showing the disability onset date and the determination date must be attached to this form.**

If you are determined by the Social Security Administration to no longer be disabled, you must notify the COBRA Administrator in writing within 30 days after the Social Security Administration's determination.

☐ I have been determined to no longer be disabled by Social Security Administration

**REQUIRED: A copy of the Social Security determination showing the disability end date and the determination date must be attached to this form.**

**Birth or Adoption of a Child or Marriage of Qualified Beneficiary:**

You must notify the COBRA Administrator in writing as soon as possible, but no later than 30 days after the birth or adoption of a child.

☐ Birth of a child

☐ Adoption or placement for adoption of a child

Name of Child: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Date of Adoption or Date of Placement for Adoption (if applicable): \_\_\_\_\_

You must notify the COBRA Administrator in writing as soon as possible, but no later than 30 days after you are married.

☐ I have gotten married.

Date of Marriage: \_\_\_\_\_

**Other Changes:**

The Qualified Beneficiary must notify the COBRA Administrator in writing as soon as possible, but no later than 60 days after any of the following events:

Check all events that have occurred:

☐ I became enrolled in Medicare Effective Date: \_\_\_\_\_

**REQUIRED: A copy of your Medicare health insurance card must be attached to this notice.**

☐ I became covered by another employer-sponsored group health plan Eff. Date: \_\_\_\_\_  
Name of Child: \_\_\_\_\_ SSN#: \_\_\_\_\_

The Qualified Beneficiary must notify the COBRA Administrator in writing as soon as possible whenever their address changes.

☐ My mailing address has changed

New Address: \_\_\_\_\_

☐ My name has changed

New Name: \_\_\_\_\_

**PLEASE COMPLETE THIS SECTION FOR ALL EVENTS:**

Name of Qualified Beneficiary: \_\_\_\_\_

Social Security Number or ID Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

☐ Check if your mailing address has changed. ☐ Check if your name has changed.

Address: \_\_\_\_\_

Plan Name/Group Number: \_\_\_\_\_

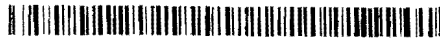
Marital Status: \_\_\_\_\_

Name of person submitting this form, if other than qualified beneficiary listed above:

Relationship to Qualified Beneficiary: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Mail to: UMR  
COBRA ADMINISTRATION  
PO BOX 1206  
WAUSAU, WI 54402-1206



MS DEBORAH GEIKEN  
5705 W WALDEN DR  
SIOUX FALLS SD 57106

Due Date: 10/1/2010 Amount Due: \$ 123.70

Make Payable and mail to:

UMR  
COBRA ADMINISTRATION  
PO BOX 1206  
WAUSAU, WI 54402-1206

If Change of Address, Please Correct Above.

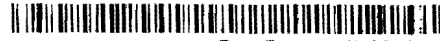
Signature:

THARALDSON EMPLOYEE MANAGEMENT CO

Did you become covered by Medicare/other Group Plan? Y/N

Effective date of other plan: / /

>>=====<<<



MS DEBORAH GEIKEN  
5705 W WALDEN DR  
SIOUX FALLS SD 57106

Due Date: 11/1/2010 Amount Due: \$ 123.70

Make Payable and mail to:

UMR  
COBRA ADMINISTRATION  
PO BOX 1206  
WAUSAU, WI 54402-1206

If Change of Address, Please Correct Above.

Signature:

THARALDSON EMPLOYEE MANAGEMENT CO

Did you become covered by Medicare/other Group Plan? Y/N

Effective date of other plan: / /

>>=====<<<



MS DEBORAH GEIKEN  
5705 W WALDEN DR  
SIOUX FALLS SD 57106

Due Date: 12/1/2010 Amount Due: \$ 123.70

Make Payable and mail to:

UMR  
COBRA ADMINISTRATION  
PO BOX 1206  
WAUSAU, WI 54402-1206

If Change of Address, Please Correct Above.

Signature:

THARALDSON EMPLOYEE MANAGEMENT CO

Did you become covered by Medicare/other Group Plan? Y/N

Effective date of other plan: / /

>>=====<<<



MS DEBORAH GEIKEN  
5705 W WALDEN DR  
SIOUX FALLS SD 57106

Due Date: 1/1/2011 Amount Due: \$ 123.70

Make Payable and mail to:

UMR  
COBRA ADMINISTRATION  
PO BOX 1206  
WAUSAU, WI 54402-1206

If Change of Address, Please Correct Above.

Signature:

THARALDSON EMPLOYEE MANAGEMENT CO

Did you become covered by Medicare/other Group Plan? Y/N

Effective date of other plan: / /

>>=====<<<



MS DEBORAH GEIKEN  
5705 W WALDEN DR  
SIOUX FALLS SD 57106

Due Date: 2/1/2011 Amount Due: \$ 123.70

Make Payable and mail to:

UMR  
COBRA ADMINISTRATION  
PO BOX 1206  
WAUSAU, WI 54402-1206

If Change of Address, Please Correct Above.

Signature:

THARALDSON EMPLOYEE MANAGEMENT CO

Did you become covered by Medicare/other Group Plan? Y/N

Effective date of other plan: / /

>>=====<<<



MS DEBORAH GEIKEN  
5705 W WALDEN DR  
SIOUX FALLS SD 57106

Due Date: 3/1/2011 Amount Due: \$ 123.70

Make Payable and mail to:

UMR  
COBRA ADMINISTRATION  
PO BOX 1206  
WAUSAU, WI 54402-1206

If Change of Address, Please Correct Above.

Signature:

THARALDSON EMPLOYEE MANAGEMENT CO

Did you become covered by Medicare/other Group Plan? Y/N

Effective date of other plan: / /

FAC

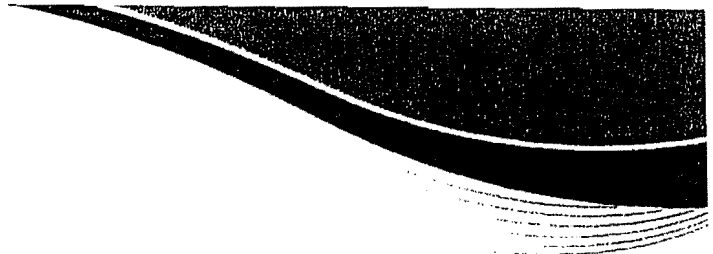
877-291-3241

HH.

CARRIE



UMR  
PO Box 1206  
Wausau WI 54402-1206  
Phone 1-800-207-1824  
Fax 715-841-7213



DEBORAH GEIKEN  
5705 W WALDEN DR  
SIOUX FALLS SD 57106

April 4, 2011

Re: Termination Due to Late Payment of Premium – Request for Review Response

This letter is in response to your request for review received on June 3, 2010.

We have carefully reviewed the information in your letter and regret that we are unable to provide you with a favorable response to your inquiry due to non-payment of your November premium. Per Federal Regulations COBRA participants have a 30-day grace period in which to make payment.

Please refer to the enclosed copies of the COBRA Election Notice which was sent to you on February 4, 2010, and the Confirmation of COBRA Election which was sent to you on April 8, 2010. I have highlighted sections regarding making payments on time and within the 30-day grace period.

The COBRA Election Notice states: "Periodic payments are due on the first of the month and you have a maximum 30 day grace period in which to pay your monthly premium. The 30 day grace period protects you from cancellation but claims incurred or prescription submissions may be denied during the grace period. If your payment is postmarked within the 30 day grace period, those denied claims and prescription submissions can be reconsidered for payment. The plan will not send periodic notices of payment due for these coverage periods.

If you fail to make a periodic payment before the end of the grace period, you will lose all rights to continuation coverage under the Plan and coverage will be terminated retroactive to the last day of coverage for which payment was made."

The Confirmation of COBRA Election states: "Enclosed are coupons that should be sent along with each monthly payment. You will not be sent regular notices. Please review your first coupon as your first payment may be pro-rated. The first coupon also shows your next payment due date. It will be your responsibility to make payments on a timely basis. Payments must be received by UMR no later than the first day of the month for which payment is due. While premiums are due on the first of the month, you have a maximum 30 day grace period in which to pay your monthly premium. The 30 day grace period protects you from cancellation but claims incurred or prescription submissions may be denied during the grace period. If your payment is postmarked within the 30 day grace period, those denied claims and prescription submissions

**EXHIBIT "B"**

Page 2

April 4, 2011

can be reconsidered for payment. Once your continuation of coverage terminates for late payment, non-payment, or check returned for non-sufficient funds, it cannot be reinstated."

Per Federal COBRA regulations, we allow a 30 day grace period for payments to be mailed after the due date of the first day of the month. We process the termination of coverage retroactive to the last day of coverage for which payment has been made if the payment is not received within the 30 day grace period.

Your COBRA continuation coverage under the Tharaldson Employee Management Co. Group Health Plan terminated as of March 31, 2010 due to late payment.

Internal Revenue Code 4980B(f)(2)(B) states:

"(B) Period of coverage. --- The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:  
(iii) Failure to pay premium.---The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary."

Internal Revenue Code 54.4980B-8 states:

"Q-5: What is timely payment for COBRA continuation coverage?

...A-5(e) Payment is considered made on the date which it is sent to the plan."

If you have any questions about the information contained in this notice, you may contact your COBRA Administrator, UMR, P.O. Box 1206, Wausau WI 54402-1206. The toll free telephone number is (800) 207-1824.

COBRA Administration

Enclosures

**UMR**